

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 22, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07od-075

OAHU

Grant of Term, Non-Exclusive Easement to David & Cynthia Fujiwara for Seawall Purposes,
Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:049-0002 seaward.

APPLICANT:

David & Cynthia Fujiwara, husband and wife, tenants by the entirety.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kaneohe, Koolaupoko, Oahu, identified by Tax Map
Key: (1) 4-4-037:049-0002 seaward, as shown on the attached map labeled Exhibit A.

AREA:

12 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exemption Notification attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine initial rent/one-time payment. [Note: Applicant already provided the map and description of the subject area.]

REMARKS:

During the shoreline certification process for the abutting property owned by the applicant, a portion of the seawall (about 12 square feet) is found encroaching on State land. A survey map showing the encroaching area is attached as Exhibit C.

Office of Conservation and Coastal Lands (OCCL) was asked to comment on the request for a disposition to resolve the encroachment. OCCL believes that the subject encroachment was built as part of the authorized dredge and fill activity around 1953 under a permit issued by the U.S. Army Corps of Engineers. Therefore, OCCL supported the issuance of an easement. A copy of OCCL's letter is attached as Exhibit D.

Department of Hawaiian Home Lands and Office of Hawaiian Affairs do not have any objection to the request. Department of Planning and Permitting did not respond as of the suspense date of the request.

For the Board's information, around 2007, applicant was also considering purchasing the subject land from the State pursuant to statute pertaining to the sale of reclaimed land. Due to the court decision regarding the sale of ceded land, his request was withheld. Recently, the applicant advised the staff that they would pursue the option of obtaining an easement, believing that such option would provide a quicker solution relating to their shoreline certification application.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff recommends no fine as the subject encroachment is less than 100 square feet.

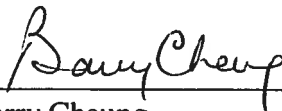
There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-4-037:049-0002, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to David and Cynthia Fujiwara covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-4-037:049-0002, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

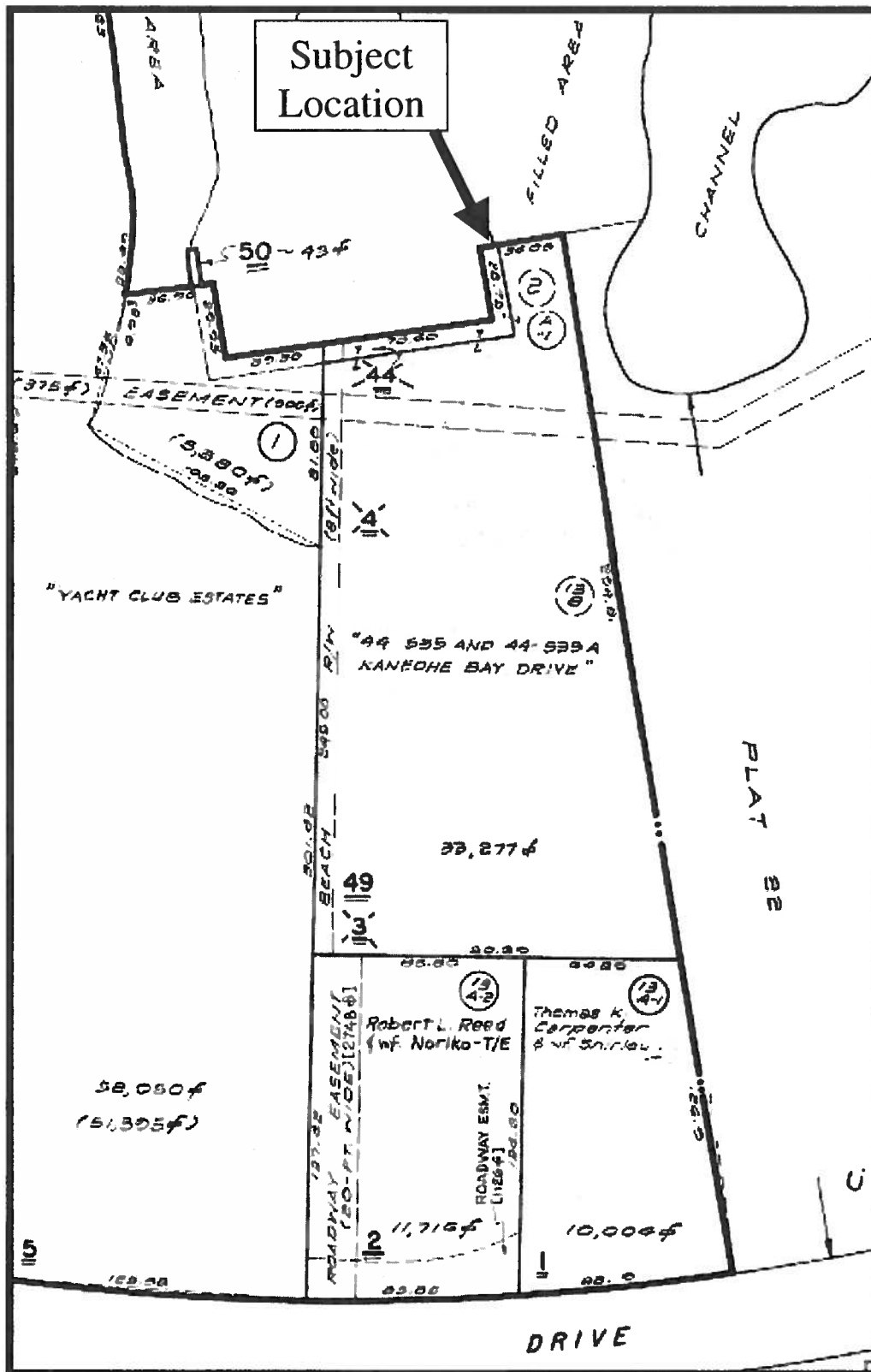
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



TMK (1) 4-4-037:049-0002

EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 22, 2010

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of term, non-exclusive easement to David & Cynthia Fujiwara

Project / Reference No.: PSF 07OD-075

Project Location: Kaneohe, Koolaupoko, Oahu, TMK:(1) 4-4-037:049-0002 seaward

Project Description: Seawall easement purposes

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Office of Conservation and Coastal Lands believes the subject seawall was built as part of the authorized dredge and fill activity pursuant to a permit issued by the U.S. Army Corps of Engineers around 1953. The use has continued since then and the applicants have no intention to change the use. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

EXHIBIT B

Consulted Parties

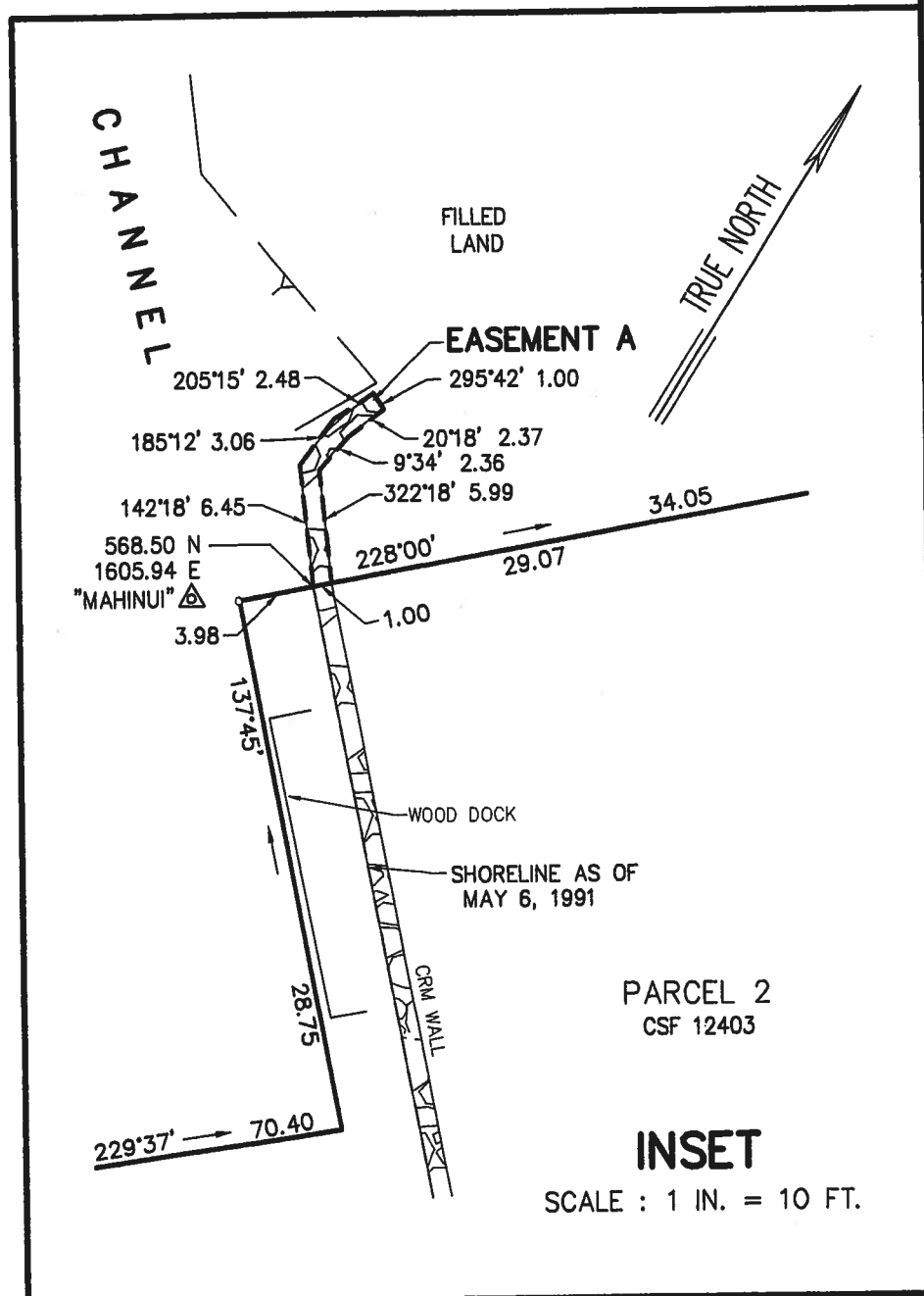
Office of Conservation and Coastal Lands

Recommendation:

It is recommended the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

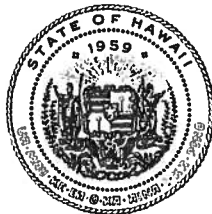
Date



15" x 21" = 2.2 Sq.Ft.

EXHIBIT "C"

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

2001 DEC 19 P 3:53

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:CC

File Number Encroachment: OA-07-010

DEC 19 2007

MEMORANDUM:

TO: Al Jodar, Land Agent
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at 44-535 A Kaneohe Bay Drive,
Kaneohe, Oahu (TMK: 4-4-037:049) Fujiwara

This is in response to your June 22, 2007, request to resolve a state land encroachment seaward of private property in Kaneohe, Island of Oahu.

According to information and maps contained with your request, there appears to be approximately 12 square feet of encroachment (seawall) on parcel 049.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State for the subject improvements. However, aerial photographs provide evidence that the channel was in existence prior to 1955, with amplifying information provided through email correspondence with the USACE, Honolulu District. The email asserts that the 40' x 650' deepwater channel was permitted under USACE permit No. 800-6-389 in 1953. The notarized letter from Linuce Pang asserts that the short section of wall was built prior to 1960. The OCCL believes the short section of wall was built as part of the authorized dredge and fill activity.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

EXHIBIT "D"

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

There is no beach resource in the area. There are extensive vegetated mud banks along the shoreline.

Public Access:

There are no public accesses to the shoreline fronting the parcel.

Effect of Removing the Encroachment on:

Beach Resources: *There is no beach resource to effect.*

Public Access: *OCCL staff has determined that public access will not be enhanced by removal of the structure.*

Affect on Adjacent Properties: *It is unlikely that removal of the seawall would have any effect on adjacent properties.*

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access.

Upon review and careful consideration of the information gathered on this case, staff has determined that granting of an easement does not contradict the requirements stated in HRS §205A. The OCCL supports a disposition request being processed.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381.

cc: Oahu Board Member
Chairperson's Office
City and County of Honolulu
Department of Planning and Permitting